

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Leila Parker-Malchak	§	Group Art Unit:	3627
		§		
Serial No.:	10/730,665	§	Confirmation No:	4833
		§		
Filed:	December 8, 2003	§	Examiner:	Fawaad Haider
		§		
For:	SELF-CHECKOUT SYSTEM	§	Atty. Dkt. No.:	11362

Mail Stop: AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF AND REQUEST FOR REVIEW

Dear Sir:

Applicant respectfully requests review and withdrawal of the final rejection in light of the pre-appeal brief that follows. No amendments have been made or filed and a Notice of Appeal is being filed contemporaneously with this request for review.

103(a) Rejection of Independent Claims 6, 11 and 15

The obviousness rejections hinge on the application of Ruppert in combination with Garwood. As discussed in greater detail below, Ruppert and Garwood do not support the Office Action's reading of them and the rejections based thereupon should be reconsidered and withdrawn. Further, the Applicant does not acquiesce in the analysis of Ruppert and Garwood made by the Office Action and respectfully traverses the Office Action's analysis underlying the rejections.

The Office improperly alleges that Ruppert teaches all but one of the elements required by Applicant's claimed invention. Applicant asserts that Ruppert fails to teach more than the one element the Office acknowledges to be missing from Ruppert. The one element acknowledged to be missing from Ruppert is a weight learning database stored in a memory which the Office alleges to be in Garwood.

Ruppert teaches a “portable RF ID tag and barcode reader.” (Ruppert, title.) Ruppert describes a number of different embodiments of the portable reader some with an RFID tag reader and some without. The embodiment disclosed by Ruppert in figure 3 is an embodiment that does not comprise an RFID tag reader. Applicant’s claimed invention requires, in part: a processor, a memory in communication with said processor and a first radio frequency identification (RFID) tag antenna in communication with the processor. Clearly, Applicant requires not just a processor but a processor that is in communication with an RFID tag antenna. On page 2 of the Office Action mailed on January 25, 2008 and again in the Office Action mailed July 17, 2008, the Office asserts that the processor and memory depicted in Ruppert’s figure 3 are equivalent to Applicant’s required processor and memory. This assertion is in error. Since the embodiment described by Ruppert in figure 3 does not even comprise a radio frequency identification tag reader must less a radio frequency identification tag reader in communication with the processor, the processor and memory described in figure 3 cannot satisfy Applicant’s required elements. Therefore, the Office has failed to establish these required elements in the prior art.

In an alternative security method, Ruppert discloses that the portable RFID tag and barcode reader may download scanned item information to a “host computer of the store”. (Col. 37, lines 54 - 58.) Ruppert further teaches that “checkout stations” can have electronic scales attached to them. The checkout stations can also calculate the total measured weight of multiple items placed on the scales and then on command send the total weight to the host computer over a LAN or direction connection. (See col. 38, lines 5-16.) In this method, there are at least three independent computing devices: the portable RFID tag reader, the checkout station and the host computer of the store.

The Office asserts that Applicant’s requirement for “a scale in communication with said processor” is taught by Ruppert at col. 11, lines 45-58 and at col. 38, lines 7-23. Applicant disagrees. The first reference states “the grocery store must have a produce clerk with a scale and bar code machine who is available for bagging and labeling produce with bar codes which can be scanned.” (Col. 11, lines 45-47.) The scales described in this passage are freestanding scales that weigh an item and print a bar code encoded with the weight item. The scales are not in communication with a processor that

meets the Applicant's above stated requirements nor are they part of Applicant's retail terminal.

The second "scale" passage cited by the Office is part of the alternative security method described above. In this teaching, a scale is attached to a checkout station however, the checkout station does not have an RFID tag reader attached to it. Thus, these scales do not communicate with a processor that meets Applicant's requirements for a processor and therefore these scales are not the same as the scale element required by Applicant. The Office has failed to establish at least this required element in the prior art.

Ruppert also teaches a security tag deactivation circuit 518 located at the checkout station. The deactivation circuit 518 is controlled by the host computer and is used to demagnetize magnetized security tags and disarm RFID tags. (See col. 36, lines 24-37.) The deactivation circuit 518 broadcasts a signal to all RFID tags that causes the tags within range to disarm. The deactivation circuit 518 does not interrogate or read the tags so it cannot be equated to an RFID tag reader. Even if hypothetically the deactivation circuit 518 is equated to an RFID tag reader, Ruppert teaches that the host computer controls the deactivation circuit 518. (See col. 36, lines 12-18.) There is no teaching that the checkout station is in communication with the deactivation circuit 518. Therefore, for either or both reasons, the checkout station is absent an RFID tag reader. It follows that a processor in the checkout station is cannot be in communication with an RFID tag reader, since no reader is present. Thus the processor of the checkout station cannot be equated to Applicant's processor and the scale attached to the checkout station cannot meet the requirements of Applicant's claimed invention.

For the above reasons, the Office has failed to show or suggest how Ruppert teaches "a scale in communication with said processor," as required by Applicant. At least this element is missing from the prior art.

Applicant further requires the "processor to compare the stored and measured weights for the identified item and to actuate the first RFID antenna to verify the identification of the item if there is a perceived error in the weight of the item as measured by the scale". The Office asserts that Ruppert teaches these elements and cites

for support col. 38, lines 17-27 and Figure 33. Applicant disagrees. This passage is part of Ruppert's alternative security method described in part above. In this method, the portable RFID tag and barcode reader is used to scan one or more items. At some point, the scanned information is transferred to the host computer. The scanned items are then transported to and placed on the scale of the checkout station and weighed. Once all the items have been weighed, the checkout station sends the total weight of the items to the host computer. The host computer uses the received scanned item information to determine the standard weight of each item. The host computer then calculates the total standard weight of the items and compares it to the actual weight received from the checkout station. If the two weights match, or are within a margin of error, the transaction is allowed to complete. If the two weights are not within the margin of error, the host computer sends a message to alert a security clerk at the checkout station to request an audit of the items. (See col. 37, line 39 – col. 38, line 53.) This passage does not show or suggest the elements required by Applicant. Applicant requires the processor to compare the stored weight with the measured weight for an identified item and when there is a perceived error between the two weights, actuate the RFID antenna to verify the identification of the item being weighed on the scale. Ruppert simply does not teach actuating an RFID antenna to verify the identification of the item being weighed on the scale. To the contrary, when Ruppert detects an error between the stored weight and measured weight of an item, Ruppert sends a message to a security clerk requesting an audit of the items assuming there could be fraud. Ruppert clearly does not show or suggest the elements required by Applicant. Therefore, at least these elements are also missing from Ruppert.

Garwood teaches packages and methods for processing food products and fails to provide any of the elements shown to be missing from Ruppert.

The Office has failed to establish a *prima facie* case of obviousness because it has failed to show that the prior art shows or makes obvious all elements of Applicant's claimed invention. The rejection is thus in error and Applicant asks that it be withdrawn.

Dependent Claims

The remaining dependent claims are allowable for at least the same reasons as the corresponding independent claim.

CONCLUSION

Applicant asks the Office to reconsider this application and allow all pending claims. Please charge any fees that might be due, excluding the issue fee, to deposit account 14-0225.

Respectfully submitted,

Date: January 9, 2009

(Filed Electronically)

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